



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Pamela L. Swires

File: B-260724

Date: September 21, 1995

DIGEST

1. A transferred employee may not be reimbursed a loan origination fee in excess of 1 percent of the loan amount unless the lender's administrative charges are itemized and are shown by clear and convincing evidence not to include prepaid interest, points, or a mortgage discount. 41 C.F.R. § 302-6.2(d)(1)(ii) (1994). Where a lender's letter merely states that the fee does not contain any charges for prepaid interest, points, or mortgage discount, but cannot be further itemized, it does not meet the requirements of the Federal Travel Regulation and the employee cannot be reimbursed any amount in excess of the 1 percent loan origination fee already paid.
2. A tax service fee charged a transferred employee by a lender in connection with a purchase mortgage loan is considered to be a finance charge incident to the extension of credit and is therefore not reimbursable. George C. Souders, B-248457, Sept. 29, 1992.
3. A transferred employee was charged a flood certification fee in connection with the purchase of a residence. Since the certification was required by law as a precondition to the granting of the mortgage loan, such expense may be reimbursed. 41 C.F.R. § 302-6.2(f) (1994).
4. A transferred employee was charged a closing coordination fee incident to the purchase of a residence, a service similar to that performed by a settlement or closing agent, involving the preparation of legal documents after the loan has been approved and the review of all final documents for accuracy. Therefore, since the amount charged does not exceed the customary charge for such service in the area of the residence, it may be reimbursed under 41 C.F.R. § 302-6.2(c) (1994).

DECISION

This decision responds to a request from an Authorized Certifying Officer, National Finance Center, U.S. Department of Agriculture (USDA),¹ concerning the entitlement of an employee to be reimbursed certain real estate related expenses incurred incident to her permanent change-of-station in April 1994. We conclude that, of the expenses in question, only the expenses for flood certification and the closing coordination fee may be reimbursed.

Mrs. Pamela L. Swires, an employee of the Rural Economic and Community Development, Farmers Home Administration, USDA, stationed in Klamath Falls, Oregon, was transferred to Eugene, Oregon, and reported for duty there on April 4, 1994. Incident to that transfer, Mrs. Swires purchased a residence in the vicinity of her new duty station. Some of the expenses incurred were disallowed by the National Finance Center. Mrs. Swires now requests reconsideration of her claim for the following items:

Excess loan origination fee	-	\$792
Tax service fee	-	70
Flood certificate	-	15
Closing coordination fee	-	150

OPINION

Under the provisions of 5 U.S.C. § 5724a(a)(4) (1988), and implementing regulations contained in Part 302-6 of the Federal Travel Regulation (FTR),² certain real estate expenses are authorized to be paid. Section 302-6.2 of the FTR³ lists the reimbursable and nonreimbursable expenses incurred incident to the actual sale and purchase of residences.

Loan origination fee

Section 302-6.2(d)(1)(ii) of the FTR⁴ provides that reimbursement for a loan origination fee may not exceed 1 percent of the loan amount unless the employee shows by clear and convincing evidence that the higher rate does not include

¹Ms. Sandra S. Williams — Reference FSD-1 RJP.

²41 C.F.R. Part 302-6 (1994).

³41 C.F.R. § 302-6.2 (1994).

⁴41 C.F.R. § 302-6.2(d)(1)(ii) (1994).

finance charges (prepaid interest, points, or a mortgage discount), and that the higher rate is customarily charged in the area where the residence is located. Also, a claim in excess of the 1 percent is to include an itemized list of the lender's administrative charges. A general, explanatory letter from a lender indicating that a fee does not include finance charges and is customary in the area does not satisfy the itemization requirement.⁵

Correspondence from the First Interstate Bank, dated January 11, 1995, to Mrs. Swires states that the loan origination fee "cannot be itemized, there is nothing to itemize." This statement falls short of the requirements of the FTR, which in effect ask the bank to justify any loan origination fee in excess of 1 percent by explaining the specific costs to the bank the fee is used to offset. While we do not dispute the bank's statement, we cannot allow the claim for the portion of the fee that exceeds the 1 percent limit without further explanation from the bank consistent with the regulation. If Mrs. Swires is unable to obtain this further explanation, we must uphold the denial of her claim for the excess loan origination fee by the National Finance Center.

Tax service fee

Section 302-6.2(d)(2)(v) of the FTR⁶ specifies that any "fee, cost, charge, or expense determined to be part of the finance charge" under the Truth in Lending Act and Regulation Z are not reimbursable. We have held that a tax service fee is part of the lender's finance charge incident to the extension of credit and not reimbursable.⁷ Therefore, this claim item may not be reimbursed to Mrs. Swires.

Flood certificate fee

Section 302-6.2(f) of the FTR⁸ provides reimbursement authority for other incidental charges for "required services" if they are customarily paid by the purchaser of a residence at the new station, but the amount reimbursed may not exceed the customary rate in the locality of the residence. We have held that the phrase "required services" as used in the FTR refers to those obligations imposed on the employee by a lending institution, or by state or local law, as a precondition to the sale or purchase of a residence. If they are so imposed, they may be reimbursed.

⁵Thomas P. Dercola, B-256771, Mar. 24, 1994, and decisions cited.

⁶41 C.F.R. § 302-6.2(d)(2)(v) (1994).

⁷George C. Souders, B-248457, Sept. 29, 1992, and decisions cited.

⁸41 C.F.R. § 302-6.2(f) (1994).

If they are not imposed by law or a lending institution, they may not be reimbursed.⁹

We have been informed by an officer of Mrs. Swires's lending institution, the First Interstate Bank of Oregon, that a residential flood plain certification is now a legal requirement for all real estate in Oregon for mortgage purposes. Therefore, since it is required, it may be reimbursed as a miscellaneous real estate expense under section 302-6.2(f) of the FTR, without requiring proof that the property is in a flood plain.

Closing coordination fee

According to a letter dated October 21, 1994, from the U.S. Department of Housing and Urban Development (HUD) to Mrs. Swires, she was advised that a closing coordination fee is similar to the fee charged to prepare final documents. We were also informed by the officer of the First Interstate Bank of Oregon that this fee is charged to cover the cost of after-the-loan-approval preparation of some legal documents, and review all final documents to determine accuracy and that their's and other's interests are fully protected. Thus, it appears that this service is similar to that performed by a settlement agent at a closing. Since no agent or attorney fee was charged to perform the settlement or closing in this case, and in view of the fact that the amount charged for this service is within the range recognized by HUD as proper, this fee may be paid as a legal and related expense item under section 302-6.2(c) of the FTR.¹⁰

/s/Seymour Efros
for Robert P. Murphy
General Counsel

⁹Leonard L. Garofolo, 67 Comp. Gen. 449 (1988), and decisions cited.

¹⁰41 C.F.R. § 302-6.2(c) (1994).